

**NOT FOR PUBLICATION**

UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

**FILED**

**APR 12 2006**

ROSA SANDOVAL BECERRA;  
AGUSTIN JAIME MARTINEZ PRIETO;  
MARCELA ALHELI MARTINEZ  
SANDOVAL,

Petitioners,

v.

ALBERTO R. GONZALES, Attorney  
General,

Respondent.

No. 04-74285

CATHY A. CATTERSON, CLERK  
U.S. COURT OF APPEALS

Agency Nos. A78-051-614  
A78-364-449  
A78-364-448

MEMORANDUM\*

On Petition for Review of an Order of the  
Board of Immigration Appeals

Submitted April 5, 2006\*\*

Before: HAWKINS, McKEOWN and PAEZ, Circuit Judges.

Rosa Sandoval Becerra, and her husband, Augustin Jaime Martinez Prieto,  
natives and citizens of Mexico, petition for review of the Board of Immigration

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\* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

\*\* The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Appeals’ (“BIA”) order denying their motion to reopen removal proceedings. We have jurisdiction pursuant to 8 U.S.C. § 1252. Reviewing for abuse of discretion, *Bhasin v. Gonzales*, 423 F.3d 977, 983 (9th Cir. 2005), we grant the petition for review.

The evidence Petitioners submitted with their motion to reopen indicates that their son’s medical condition was not diagnosed until after the IJ had denied Petitioners’ applications for cancellation of removal. Accordingly, the BIA abused its discretion in concluding that Petitioners failed to demonstrate that the evidence they presented with their motion was unavailable at their former hearing. *See* 8 C.F.R. § 1003.2(c)(1); *see also Bhasin*, 423 F.3d at 987 (noting that where the evidence became available during the pendency of an appeal it was not “previously available” for purposes of a motion to reopen).

We remand this case so that the agency may consider whether, in light of the new evidence presented, Petitioners have established eligibility for cancellation of removal.

Because we grant the petition for the reasons stated above, we do not consider Petitioners’ due process contentions.

**PETITION FOR REVIEW GRANTED; REMANDED.**